



UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

United States of America,

Plaintiff,

and

State of Minnesota, by its
Attorney General Warren Spannaus,
its Department of Health, and its
Pollution Control Agency,

Plaintiff-Intervenor,

vs.

Reilly Tar & Chemical Corp.;
Housing and Redevelopment Authority
of St. Louis Park; Oak Park Village
Associates; Rustic Oaks Condominium,
Inc., and Philips Investment Co.,

Defendants,

and

City of St. Louis Park,

Plaintiff-Intervenor,

vs.

Reilly Tar & Chemical Corporation,

Defendant,

and

City of Hopkins,

Plaintiff-Intervenor,

vs.

Reilly Tar & Chemical Corporation,

Defendant.

File No. 4-80-469

SUPPLEMENTAL NOTICE OF
MOTION TO DISMISS AMEND-
ED COMPLAINT OF UNITED
STATES OF AMERICA

TO: United States of America, plaintiff above-named, and to John M. Lee, Francis X. Hermann, and Carol E. Dinkins, United States Attorneys, 234 United States Courthouse, Minneapolis, Minnesota 55401; State of Minnesota, plaintiff-intervenor above-named, and to Stephen Shakman, Special Assistant Attorney General for the State of Minnesota, 1935 W. County Road B2, Roseville, Minnesota 55113; City of St. Louis Park, plaintiff-intervenor above-named, and to Wayne G. Popham and Allen Hinderaker, Popham, Haik, Schnobrich, Kaufman & Doty, Ltd., 4344 IDS Center, Minneapolis, Minnesota 55402; City of Hopkins, plaintiff-intervenor above-named, and to Joseph C. Vesely, 203 Northwestern Bank Building, Hopkins, Minnesota 55343

PLEASE TAKE NOTICE that at 2:00 o'clock p.m. on December 2, 1981, or as soon thereafter as counsel can be heard, at Courtroom 4 of the United States Courthouse, Minneapolis, Minnesota, the defendant Reilly Tar & Chemical Corporation will move the Court as follows:

1. To dismiss the action above-entitled because the Amended Complaint fails to state a claim upon which relief can be granted.

2. To dismiss the action above-entitled insofar as it is based on 42 U.S.C. § 6973 and federal common law on the ground that the Court lacks jurisdiction because the action is not authorized under 42 U.S.C. § 6973 and does not arise under federal common law. Therefore, neither 42 U.S.C. § 6973 nor 28 U.S.C. §§ 1331 or 1345 confer jurisdiction upon this Court.

3. To dismiss paragraphs 3 through 8 and 10 of the Prayers for Relief stated in the Amended Complaint on the ground that the relief sought therein is not authorized by 42 U.S.C. § 6973 under which this action has in part been brought.

Said motion is based upon all the files, records and pleadings attached hereto and made a part hereof, including the following:

1. Statement of Points and Authorities in Support of Defendant Reilly Tar & Chemical Corporation's Motion to Dismiss the Complaint of Plaintiff United States of America.

2. Supplemental Statement of Points and Authorities in Support of Defendant Reilly Tar & Chemical Corporation's Motion to Dismiss the Amended Complaint of Plaintiff United States of America.

3. Reply Memorandum of Reilly Tar & Chemical Corporation in Response to the Memoranda in Opposition of Plaintiff United States of America and Intervenor State of Minnesota.

4. Supplemental Statement of Points and Authorities in Support of Defendant Reilly Tar & Chemical Corporation's Motion to Dismiss the Complaints of the Intervenor.

5. Affidavit of Carl F. Leshner.

6. Appendix A attached to this Motion.

Dated:

DORSEY, WINDHORST, HANNAFORD,
WHITNEY & HALLADAY

By

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Attorneys for Reilly Tar &
Chemical Corporation

APPENDIX A



Metro news

Comics/TV-Radio

Minneapolis Tribune

Wednesday
August 19/1981

1B.

Officials close sixth city well in St. Louis Park

By Julie Kramer
Staff Writer

The sixth of St. Louis Park's 14 municipal wells has been closed because of groundwater contamination, although it may be reopened if further testing deems the water safe.

Since 1978, five wells in St. Louis Park and one in Hopkins have been closed because of contamination linked with the old Republic Creosote Co. plant. Relilly Tar and Chemical Corp., which now owns the com-

pany, is charged with dumping hazardous wastes on the site and allegedly polluting the wells.

State officials believe that the most recent indication of contamination also is tied to the plant, which is located one-half west of the well site.

Municipal well No. 5 was shut down late Monday after a quarterly water quality test showed polynuclear aromatic hydrocarbons (PAHs) present in high concentrations. PAHs are large chemical molecules, which can

be carcinogenic, usually found around tar and asphalt. Mike Convery, a hydrologist for the Minnesota Department of Health, said that although the PAHs found in the well are at a strong level, they are not carcinogenic.

James Brimeyer, city manager, questions the validity of the recent tests that led to the well shutdown. "I don't think the numbers were accurate the first time out. I expect different numbers, lower ones," Brimeyer said. He said that he had "no

idea" if they (the new figures) would be low enough to reopen the well.

The Department of Health is running further tests from Well No. 5 to verify the data. Convery said the figures were "rather high for those types of compounds, but not higher than conceivable."

"If we have big discrepancies (after the tests) we'll talk about it. We don't want to get into a fight of our labs are right; your labs are wrong," Convery said.

The recent testing also showed traces of PAH compounds still present in three of the closed St. Louis Park wells. According to the tests, two of the wells are now free of the contaminants.

The city has no plans to reopen these wells, but will continue to study water treatment methods that extract PAH compounds from water. Convery said the wells would be opened for only two reasons: fire or a severe

Well continued on page 6B

Well

Continued from page 1B

water shortage.

City officials said well No. 5 is used only in summer, and if cool weather and occasional rain continues, there's no need to worry about water rationing. Should a hot, dry spell hit, Brimeyer said the city will use the same odd-even rationing plan it used last summer, with certain restricted times.

Convery said that shutting a well is not much of a problem in winter, but that a residential area such as St. Louis Park uses twice as much water in the summer.

"If we ran into a hot spell through September, there could be a problem," he said. "The whole thing is kind of iffy. I'd feel more comfortable if this was a couple weeks down the line."

St. Louis Park was awarded \$400,000 earlier this year from the U.S. Environmental Protection Agency to help clean up the hazardous chemical waste at the Relilly Tar site. 7200 Walker St. Convery said the city has already received \$200,000, which will be used to clean out coal tar that has been caught in the two wells on the old Relilly Tar site for almost 50 years. The city is awaiting the remaining \$200,000.

"One of those wells is 900-plus feet deep. We'd like to get them taken care of. They're one of the major ways the contaminant spreads," Convery said. "We're looking at a Ping-Pong ball of contaminants that set up a timetable of occurrences."

Despite the funds that have been granted and the studies under way, Convery said the hazardous wastes in St. Louis Park will probably not be totally eliminated. Speculation on the cleanup costs vary, depending on the source. "Most of us assume we won't be able to clean it (the wastes) all up. We'd like to control what remains behind," he said. "If you're talking to the Relilly folks it (the cost) will be about \$100,000, more pessimistic people might say \$100 million."

The suit against Relilly Tar by the cities of St. Louis Park and Hopkins, the state of Minnesota and the federal government will begin Sept. 16. The suit requests that Relilly Tar to clean the contaminants from the site and prevent their spread.



St. Louis Park

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City faces possible summer water shortage Seventh well closure causes total sprinkling ban

By TERRY RUANE

St. Louis Park officials have developed a new water program designed to avert a potential water shortage following the shutdown of a seventh contaminated city well.

The new program calls for drilling a new well, inter-connections to receive water from other cities and

immediate imposition of a sprinkling ban. The measures are intended to head-off a threatened water shortage during the peak summer demand months.

"We should be alright for now," said city manager Jim Brimeyer, because the city is approaching a period of lessening water demand.

We hope that by taking quick action we can avoid shortage next summer."

City officials closed down Well 14, Sept. 1, when August test results revealed a high concentration of Polynuclear Aromatic Hydrocarbon (PAH) compounds. The same compounds have forced the closure of six other city wells.

A retest of the results have shown the figures to be wrong and the most recent recheck has shown only negligible amounts of contamination.

The closure of Well 14, combined with the August closing of Well 5, has dropped the city's supply capacity by about 20 per cent, according to Brimeyer.

A graph prepared by the city staff shows only one heavy demand month during the winter, but the summer months of May-August are expected to severely test the city's water capacity.

The city plans to avert a shortage by drilling a new well into the Hinckley Aquifer at a cost of \$300,000.

The Hinckley Aquifer is several hundred feet beneath the contaminated Prairie du Chien-Jordan

Aquifer and city tests have never shown contamination at the Hinckley level.

Brimeyer estimated the well

would take six to eight months to construct with operation commencing in March.

The second phase of the program

calls for a hook-up to the Plymouth water system to supply the Sheldard

Water to page 5

Water from page 1

Park region of the city.

The cost of the Plymouth connection would be \$40,000 with three months needed for construction. A meter would be installed with St.

Louis Park paying for the water usage.

Brimeyer said Plymouth officers have been contacted and are receptive to the connection.

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The third aspect of the program is the total sprinkling ban, implemented because the 1980 odd-even ban wasn't effective in conserving water.

The three part plan was approved at the Sept. 8 city council meeting.

The city is also exploring water connections with Minneapolis and Minnetonka as precautionary measures.

At a Friday press conference, Mayor Phyllis McQuaid emphasized the city's concern was with the quantity of water, not the quality.

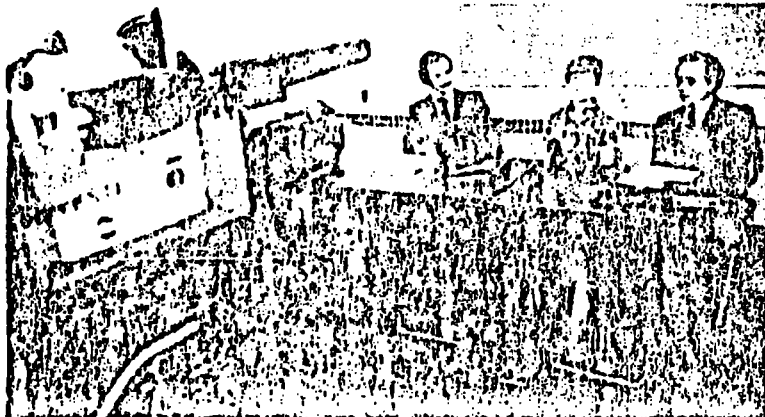
"The city's drinking water is safe to drink," she explained; "that's the reason for shutting down the wells. We want to get the contaminated water out of the system."

Brimeyer said two other previously contaminated wells have shown no pollutants in recent tests and there is a possibility of reopening them.

He said the city is discussing the well reopenings with the Minnesota Department of Health (MDH) to relieve the possible shortage.

According to MDH spokesman, it is the department's policy to keep wells closed following a shutdown.

Brimeyer said all three closed well could be pressed into service during an emergency.



CITY OFFICIALS met the television camera to explain the latest developments in the city's water saga. Dick Koppy, director of public works; Phyllis McQuaid, mayor; and Jim Brimeyer, city manager, told the media, Friday, the situation wasn't as bad as originally thought, but emphasized a total sprinkling ban would remain in effect.